IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 1064 OF 1997

Sham Ramashree Sutar ... Petitioner.
V/s.
M/s Bombay Textile Research. .. Respondent.

Shri S.N. Deshpande for the petitioner.

Shri A.V. Bukhari with P.M. Palshikar for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 24.4.2006.

P.C. :

. Heard rival parties.

Perused petition.

2. This petition is directed against the order dated 30.9.1996 passed by the 4th Labour Court, Thane, in Reference (ID) No. 12 of 1982, holding that master and servant relationship has been established; however the complainant has failed to prove that he has completed 240 days continuous service to demonstrate breach of section 25-F of the Industrial Disputes Act.

3. Having heard rival parties, having gone through the evidence and findings recorded by the Courts below, one has to reach to the conclusion that each and every and every finding recorded by the Court below is based on evidence.

4. The Court below in para 10 of the Award has categorically observed as under:

> "From the evidence on record, I find that the 1st party company has failed to prove that Shyam Sutar workman was an independent contractor because the tests i.e. (1) power of selection of S.Sutar as their servant (2) mode of payment of wages (3) right to contract the method of doing work (4) right of removal has been proved in this case to bring the 2nd party workman within the definition of employees. The C.W.1 Kamath for Company admitted in cross that Shyam Star was paid Rs.15/-j per day for the days of work done. Allotment of work was done by Nirgude and Kamath admitted the work allotment slips filed at Ex.9 which show that Shyam Sutar was asked to do, some repair work and he was given the tools of the company such as Rauidha, backsaw, Farashi, plier, file screw driver carpenter tape, hammer, toche and drill etc. C.W.1 Kamath has also admitted at page 5 in cross that work was assigned to Shyam Sutar and he completed the work and initial of Nirgude is there and the slips at Ex.9 are admitted . C.W.1 Kamath admitted in cross at page 6 that he has no book to show that workman was employed on contract basis. C.W.1 Kamath further admitted in cross page 7 that Shyam Sunder used to work with the company tools of BITRA and he used to come with empty hands and go with empty hands. All these admitted statements go to establish that Shyam Sutar was not an independent contractor and he was a workman and accordingly I answer issue No.1 in the affirmative. However, even if I have held above that 2nd party was employee i.e. workman, still the 2nd party has to prove that he has put in 240 days continuous service to claim reinstatement."

5. It is further observed as under:

> It is also admitted by workman that salaries of 200 employees used to be paid on payment register and his name was not in the payment register or muster roll of 200 employees. From these admitted facts, it

> appears to me that 2nd party workman was not on permanent pay roll of company as his attendance being marked in another book and secondly workman admitted that he used to be given break every 3 months."

The Court below also recorded a finding that the 2nd party has failed to establish and prove his case warranting attraction of under sec. 25-F of the Industrial Disputes Act.

6. In the aforesaid view of the findings recorded by the Court below, no case is made out to interfere with the impugned Award.

7. In the result, petition is without any substance. The same is, thus, dismissed. Rule is discharged with no order as to costs.

(V.C.DAGA,J.)